

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow. Claim 16 has been amended to include the recitations of previous claim 19, which is now canceled.

Claim Rejections Under 35 USC 112

Claim 16 was rejected for being indefinite. Claim 16 now includes the recitations from claim 19, which was not rejected for being indefinite. Therefore, the rejection to claim 16 has been rendered moot.

Claim Rejections Double Patenting

Applicants request that the Examiner withdraw the provisional judicially created obviousness-type double patenting rejection over Application No. 10/498,215, which has not yet been examined on the merits. With the submission of this response, applicants believe that all outstanding rejections have been overcome. MPEP § 804 I. B., reproduced below, states that when a provisional obviousness-type double patenting rejection is the only rejection remaining, the Examiner should withdraw the rejection and allow the application to issue as a patent.

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

If the "provisional" double patenting rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit the application to issue as a patent. The examiner should maintain the double patenting rejection in the other application as a "provisional" double patenting rejection which will be converted into a double patenting rejection when the one application issues as a patent.

Claim Rejections Under 35 USC 103(a)

Claims 16-29 are rejected under 35 USC 103(a) as being obvious over Okada et (US Patent No. 6,113,943) in view of Hutchinson (US Patent No. 5,889,110). Applicants traverse this rejection for the following reasons.

As applicants have previously mentioned, there is no showing of a blood concentration pattern in Hutchinson, which merely presumes a releasing “term” based on a pharmacological effect and does not refer to a blood concentration pattern or a release pattern. Even if a releasing term could be presumed based on a pharmacological effect, it is very difficult to design a blood concentration pattern, based on the teaching of Okada and Hutchinson.

Even if Okada and Hutchinson are combined, these references do not teach or suggest the improved blood concentration pattern of the present invention. This silence cannot amount to a motivation or reasonable expectation of success to do what the present inventors have done. Therefore, applicants respectfully request that the rejections to the present invention be withdrawn.

Conclusion

Applicants believe that the present application is in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By  _____

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